

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF:

NAME:

**ROBERT PAUL SPARRA, JR, and
KELLY ELIZABETH SPARRA,**

Debtor(s).

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CHAPTER 7

NO. 17-72318-JRS

**MOTION FOR RECONSIDERATION OF
ORDER REGARDING WHETHER CO-DEBTOR WAS SUBJECT TO THE
AUTOMATIC STAY**

COME NOW the Debtors , by and through their undersigned attorney, and move this Court to reconsider its order of June 25, 2018 regarding whether or not co-debtor was subject to the automatic stay and shows:

1. The Debtor filed a petition under Chapter 13 of this title on December 29, 2017 and the case was converted to a Chapter 7 on January 24, 2018.
2. On June 8, 2018 an Adversary Complaint was filed alleging Defendants wrongfully foreclosed on Debtors' property because a motion to lift the automatic stay was not filed against Kelly Elizabeth Sparra, wife, and co-debtor, on the marital property located at 3606 Inman Drive, Atlanta, GA 30319.
3. On June 19, 2018 a hearing was held on whether the sale of the property January 2, 2018 was in violation of the automatic stay . The court denied debtors' motion for a temporary restraining order and ruled that the automatic stay did not apply to Kelly Elizabeth Sparra.

REQUEST FOR RELIEF

4. Debtors respectfully show this court that the case of Tisha L. Cox v. Robin Russler-Klein and Bruce N. Klien, 13-70818-WLH, U.S. Bankruptcy Court Northern District of Georgia, April 16, 2015 establishes a possessory interest of a tenant who was leasing property. In this case, Judge Hagenau states in that "a mere possessory interest in real property, without any accompanying legal interest is sufficient to trigger the protection of the automatic stay."

5. In comparison, as presented to the court, In re Merle A. Palmieri, Bankruptcy Nol. 82-05082A, Adv. 83-0712A., the court stated that "Georgia law holds that unless a document or instrument specifically provides otherwise, a tenancy in common is created wherever two or more persons are entitled to the simultaneous possession of any property. Official Code of Georgia §44-6-120." Judge Drake goes further to say "Therefore, in the event of a foreclosure on the deed to secure debt the defendant and his wife would become tenants in common of the house and property."

6. Debtors position is that there is clear error and the central questions is why would a tenant, who is leasing a property as in In re Tisha Lynn Cox case cited above, even for a short period of time, have superior property rights and protection of the automatic stay over the wife, Kelly Sparra who has been living with husband for 19 years in their marital home, and not have equal protection of the automatic stay. In Judge Drakes' case, In re Merle A. Palmieri, Bankruptcy Nol. 82-05082A, Adv. 83-0712A., as cited, would have provided debtor, Kelly Sparra, a tenancy in common, with protection of the automatic stay.

7. Because the cases cited above by debtors have not been overturned and clearly grant to Kelly Elizabeth Sparra the protection of the automatic stay, Debtors respectfully request

the court reconsider its ruling of June 19, 2018 and allow the case as filed by Debtors to go forward.

WHEREFORE, the Debtors moves this Court to enter its order as follows: (a) granting this Motion; (b) reconsidering the Order ; (c) vacating the Order; (d) allowing the adversary case to go forward for damages.

This 26th day of June 2018.

/s/ Bob Phillips
Bob Phillips
Attorney for Debtors
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CERTIFICATE OF SERVICE

I, Bob Phillips, certify that on June 8, 2018, I caused a copy of the Motion to Reconsider to be filed in this proceeding by electronic means and to be served by depositing a copy of the same in the United States Mail in a properly addressed envelop with adequate postage thereon to the said parties as follows:

Denise Dotson, Trustee
P.O. Box 435
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Dated: June 26, 2018

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